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In re Application of
BRETT et al
U.S. Application No.: 10/563,675
PCT No.: PCT/GB04/02963
Int. Filing Date: 09 July 2004
Priority Date: 09 July 2003
Attorney Docket No.: BOLTP001
For: SYSTEM AND METHOD FOR
SENSING AND INTERPRETING
DYNAMIC FORCES

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed with the United States Designated/Elected Office (DO/EO/US) on 10 October 2006.

BACKGROUND

On 10 May 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge fee was required. Applicants were given two months to respond with extensions of time available.

On 10 October 2006, applicants filed a response which was accompanied by, *inter alia*, the subject petition; a declaration signed by two of the three named inventors; a statement by Angela Kukula ("Decl."); a three-month extension and fee; the petition fee of \$200.00; the \$130.00 surcharge fee; and exhibits A-D.

DISCUSSION

Applicants claim that Anthony Molloy refuses to cooperate in the above-identified application and have filed the subject petition in response to the Form PCT/DO/EO/905 mailed 10 May 2006.

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventors on their behalf and on behalf of the nonsigning joint inventors.

Concerning item (1), the petition fee is now \$200.00. Petitioner submitted a

\$130.00 petition fee. The \$70.00 difference has been charged to Deposit Account No. 50-0388 as authorized.

With regards to item (3), the last known address of co-inventor Anthony Molloy is listed as:

17 Mariner Avenue
Edgbaston
Birmingham
England B16 9DF

Concerning item (4), the 37 CFR 1.47(a) applicant submitted a declaration signed by two of the three co-inventors on behalf of themselves and the nonsigning joint inventor. The residence, address and citizenship of all three inventors are recorded on the declaration. This declaration meets the requirements of section 409.03(a) and is in compliance with 37 CFR 1.497(a) and (b).

Items (1), (3) and (4) of 37 CFR 1.47(a) are complete.

Regarding item (2), applicants' submitted a declaration by Angela Kukula who states that a complete copy of the subject application was mailed to the nonsigning inventor on 19 April 2006 and 03 July 2006. Copies of the two cover letters were included which shows that a copy of the application was provided to Mr. Molloy on 03 July 2006. Mr. Molloy responded asking for proof that he assigned his rights in the subject application. A copy of this letter from Mr. Molloy dated 05 July 2006 was provided.

Ms. Kukula did not indicate whether the 37 CFR 1.47(a) applicant responded to Mr. Molloy's request but stated only that she attempted to contact the nonsigning inventor via telephone on "numerous occasions from about 19 April 2004 to about 31 July 2006." Decl. at ¶ 9. Ms. Kukula declared that "he has either not answered my call or has not returned my call." Id. Ms. Kukula concludes that Mr. Molloy's conduct constitutes a refusal to cooperate. Id. at ¶ 10.

The evidence provided is not sufficient to show a refusal to cooperate by Mr. Molloy. There is no evidence that applicant responded to the request by Mr. Molloy that the 37 CFR 1.47(a) applicant provide proof that the inventor's rights had been assigned. This is not an unreasonable demand and should have been provided to Mr. Molloy. Awaiting a response from a reasonable request does not constitute a refusal. For this reason, item (2) is not yet satisfied.

All requirements of 37 CFR 1.47(a) are not yet complete.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. No additional petition fee is required.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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